IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10209 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALUSING @ KALIYO KESHRISING GURKHA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Ms. S.G. Patel, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/02/2000

ORAL JUDGEMENT

Leave granted to the petitioner to amend the

petition so as to add additional ground vide paragraph 10A. Leave granted to tender on record the copy of representation dated 18-2-2000, postal receipt of sending the same by R.P.A.D. and acknowledgment receipt of the said document. The petitioner to carry out the amendment forthwith.

Heard learned Advocate Ms. S.G. Patel for the petitioner and learned A.G.P. Mr. A.J. Desai for the respondents nos.1, 2 and 3.

1. The detention order dated 21-6-1999 passed by the respondent no.2-Commissioner of Police, Ahmedabad in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA" for short) is challenged in the present proceedings under Article 226 of the Constitution of India.

2. The grounds of detention served and supplied to the detenu, copy of which is produced on record at Annexure "B" inter alia indicate that seven criminal cases for the offences made punishable under various Sections of the Bombay Prohibition Act are registered against the petitioner at Sabarmati Police Station during the period between 7-10-1998 and 20-6-1999. That in each case countrymade liquor has been seized. That the cases vide CR nos.5230/98, 5248/98, 5246/98, 5276/98 and Chapter Case no.14/99 are pending for trial in Court while the cases vide CR nos.5044/99 and 5086/99 are pending for investigation.

3. The grounds of detention further indicate that two witnesses on assurance of their anonymity have given statement dated 20-6-1998 and 21-6-1998 respectively regarding the bootlegging activities of the petitioner and have narrated the incident alleged to have occurred on 1-6-1999 and 5-6-1999 respectively.

4. That in consideration of the aforesaid material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activity, the detention order under "PASA" is necessary, and hence, the impugned order is passed.

5. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that vide representation dated

18-2-2000, copy of which is tendered on record, the petitioner-detenu had claimed copies of the statement of witnesses recorded under Section 161 of the Cr.P.C. in respect to cases registered against the petitioner and FSL report pertaining to the material seized. The said representation appears to have been addressed to the Chief Minister and sent by registered post vide serial no.722 dated 18-2-2000. That the acknowledgment receipt signed by the concerned authority in the office of the Chief Minister on 19-2-2000 is also produced on record.

6. The petitioner has raised the contention vide paragraph 10A that reply to the said representation has not yet been received from either of the respondents and the documents claimed like report of FSL has not been received from the respondent.

7. It is pertinent to note that despite due service of rule issued vide earlier order dated 21-12-1999, none of the respondents appears to have filed affidavit to controvert the averments made in the petition, and as such, there is no explanation as to why representation has not been replied.

8. Learned AGP Mr. A.J. Desai on instructions and on referring to the original file has stated at the Bar that the representation does not appear to have been received by the concerned authority, and as such, there is no material on the file as to why representation has not been replied to or whether the same has been considered and rejected.

9. In view of the above stated facts, it is required to be held that the respondents despite the receipt of representation have failed to consider the same as early as possible which amounts to violation of the constitutional mandate under Article 22(5), and as such, the continued detention of the petitioner is rendered invalid. Consequently, the impugned order is required to be quashed and set aside.

10. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other grounds raised in the petition.

11. On the basis of the foregoing discussion, the petition is allowed. The detention order dated 21-6-1999 passed by the respondent no.2 against the petitioner is hereby quashed and set aside. The petitioner-detenu-Kalusing alias Kaliyo Keshrising Gurkha is ordered to be set at liberty forthwith, if not

required in any other case. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

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